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13 | *Counsel for Plaintiff and all others similarly situated*

Defendants.

1 Plaintiff Diana Ramirez (“Plaintiff”) on behalf of herself and all others
 2 similarly situated, hereby submits the following Opposition to Defendants
 3 FreeScore, LLC, Vertrue, Inc., Vertrue, LLC, Adaptive Marketing LLC, Idaptive
 4 Marketing LLC, and Velo Holdings Inc.’s (collectively, “Defendants”) Notice of
 5 Related Cases.

6 The instant matter and *Baxter v. Intelius, Inc., et al.*, No. SA CV-09-01031-
 7 AG (MLGx) (“*Baxter*”) are not related. The cases involve different transactions,
 8 products, representations, and parties. Different plaintiffs are involved. Five of the
 9 defendants in this case were not even parties in the *Baxter* case; only one defendant
 10 is the same. The proposed classes are not related in any manner; this case, unlike
 11 *Baxter*, involves a nationwide class asserting claims under Connecticut law. The
 12 factual and legal issues are completely different. Moreover, the *Baxter* case has
 13 already been dismissed, so no savings of judicial resources will be had from relating
 14 the cases moving forward.

15 The standard for related cases is far stricter than what Defendants suggest.
 16 Under Defendants’ standard, a defendant will de facto have all cases filed in a given
 17 court assigned to one single judge in perpetuity regardless of how tenuous the
 18 relationship between the cases.

19 **I. The Instant Case**

20 This lawsuit arises out of Defendants’ marketing and sale of allegedly “free”
 21 credit reports under the moniker “Freescore.” Congress passed the Fair and
 22 Accurate Credit Transaction Act (“FACT Act”) a number of years ago, permitting
 23 individuals to obtain periodic free credit reports from the three nationwide
 24 consumer credit reporting companies—Equifax, Experian, and TransUnion.

25 The FACT Act created a website called AnnualCreditReport.com where
 26 consumers could receive their actual “free” credit reports. Individuals obviously
 27 need to provide some personal information to obtain the “free” credit report.
 28 Defendants decided to mislead the public into believing their site was the

1 congressionally mandated “free” credit report website.

2 There is nothing free about FreeScore’s service: after a consumer arrives at
 3 the website and “joins” FreeScore.com by providing the personal financial
 4 information FreeScore requires for its allegedly “free” service, FreeScore enrolls the
 5 consumer in a credit monitoring membership that automatically charges/debits
 6 \$19.95 each month, or \$239.40 a year, unless the consumer contacts FreeScore to go
 7 through an onerous opt-out procedure.

8 Based on these allegations, Plaintiff seeks to represent a nationwide class and
 9 has asserted claims under the Connecticut Unfair Trade Practices Act, C.G.S.A. §§
 10 42-110a, *et seq.* and the Connecticut Unfair Sales Practices Act, C.G.S.A. § 42-
 11 115p,¹ as well as claims on behalf of a California subclass for violations of the
 12 Consumers Legal Remedies Act, Cal. Civil Code §§ 1750, *et seq.*, the Unfair
 13 Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, and the False
 14 Advertising Law, Cal. Bus. & Prof. Code §§ 17500, *et seq.*

15 **II. The Baxter Case**

16 *Baxter* did not involve a website disguised as the location to obtain the
 17 government mandated free credit report. *Baxter* involved a website that provided
 18 background checks on other individuals and reverse phone searches. Once the party
 19 agreed to pay and had completed one transaction, they would be made an offer for
 20 an additional product. The *Baxter* case centered on secondary transactions and
 21 whether it was an improper “upsell.” The allegations simply have nothing to do
 22 with the allegations here.

23 **III. The Cases are Not Related Pursuant to Local Rule 83-1.3.1**

24 Local Rule 83-1.3.1 identifies four factors for determining whether an action
 25 is related to a currently pending or previously filed case. The factors are that the
 26 actions appear: (a) to arise from the same or a closely related transaction, happening

28 ¹ These claims are based on a Connecticut choice of law provision

1 or event; or (b) to call for determination of the same or substantially related or
 2 similar questions of law and fact; or (c) for other reasons would entail substantial
 3 duplication of labor if heard by different judges; or (d) to involve the same patent,
 4 trademark or copyright, and one of the factors identified above in a, b or c is
 5 present. Defendants effectively concede that factors (a) and (d) are not met, but
 6 request that the cases be related pursuant to factors (b) and/or (c). However, the
 7 instant matter is not related to *Baxter* under these factors.²

8 **A. The Cases do not Call for Determination of the Same Questions of**
 9 **Fact and Law**

10 Notably, factor (b) set forth in Local Rule 83-1.3.1 requires that the cases
 11 involve the same or substantially related or similar questions of law and fact.³ This
 12 factor is not met here. The cases do not involve the same or even similar questions
 13 of fact. As explained above, the instant case is about Defendants tricking
 14 consumers into believing they are the government sponsored website for “free”
 15 credit reports and then signing them up for a monthly “membership.” The *Baxter*
 16 case concerned secondary products after people agreed to pay for background
 17 checks on others. These cases are also very different and fact specific because they
 18 involve determinations of whether or not the specific language and layout of
 19 completely different websites is false or misleading. Since these two websites are
 20 completely unrelated, look completely different, and contain different language,
 21 there is no factual overlap. The facts are simply not the same.

22

23 ² In fact, if this case is to be related to any other case, it should be related to
 24 *Winzen v. Consumerinfo.com, Inc., et al.*, Case No. No. SACV10-1783 JVS (RZx),
 25 a case that is currently pending in this Court and assigned to Judge Selna (and
 26 which has itself been related to two other cases, *Huyge v. Experian Information*
Solutions Inc., et al., Case No. 8:10-cv-01463-JVS -RZ and *Possin v. Experian*
Information Solutions Inc., Case No. 8:10-cv-00156-JVS-AN). Those cases assert
 27 similar allegations as this case, but relating to the freecreditreport.com website.

28 ³ It makes sense that both the facts and the legal issues must be the same.
 After all, obviously, many cases involve the same legal claims and causes of action,
 applied to completely different facts. This does not make them “related.”

1 Neither are the legal issues the same. This is a nationwide class action
2 asserting claims under Connecticut law. While Plaintiff has also asserted California
3 claims on behalf of a California subclass, the existence of some (but not all) of the
4 same causes of action, applied to completely different facts, certainly does not make
5 cases “related.”

B. There are No Other Reasons Denial of Related Case Transfer Would Entail Substantial Duplication of Labor

8 Defendants also contend that these cases are related because they “would
9 entail substantial duplication of labor if heard by different judges.” As set forth
10 above, there is nothing duplicative about the cases, except that one of five
11 defendants in the instant matter was involved in *Baxter*, a case that is no longer even
12 pending. Particularly in light of the fact that the *Baxter* case has been dismissed and
13 is no longer even pending before Judge Guilford, there is simply nothing for this
14 Court to “duplicate” in this action. *See, e.g., ESS Technology, Inc. v. PC-Tel, Inc.*,
15 2001 WL 1891713 at *6 (N.D. Cal. 2001) (declining to relate three cases sharing a
16 common issue regarding the reasonableness of a license proposal where “resolution
17 of this issue is dependent of a multitude of case-specific facts and issues,” such that
18 relating the cases was not likely to conserve judicial resources).

19 || IV. Conclusion

20 For the foregoing reasons, Plaintiff respectfully requests that this case not be
21 transferred as a related case.

22 ||| Respectfully submitted,

23 DATED: May 17, 2011 STRANGE & CARPENTER

By: /s/ Gretchen Carpenter
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John P. Kristensen